

STATE OF GEORGIA  
RESPONSE TO EPA'S COMMENTS ON  
DRAFT SUBTITLE D TECHNICAL COMPARABILITY APPLICATION  
July 27, 1993

1. Narrative, Page 14 - Due to the insertion of additional narrative, the sentence in question, "The approved Design and Operational Plan...", is at the top of page 15 instead of page 14.
2. Narrative, Page 17 - The phrase "evidence available,...to the Branch Chief.", will be cleared up upon resubmittal.
3. Narrative, Page 17 - Concerning "criminal action" being omitted. Criminal action is now discussed on page 19 under **XII. Enforcement**, paragraph 2.
4. Narrative, Page 17 - Error has been corrected on revised submission.
5. Narrative, Page 18 - The proposed "EPD Manual for Methane Gas Monitoring at Municipal Solid Waste Disposal Facilities" is attached as requested.
6. Narrative, Page 19 & 20 - Error has been corrected on revised submission.
7. Checklist - 40 CFR 258.1(c)&(d) - A search of Georgia's files revealed that there are no landfills that accepted waste after October 9, 1991 and closed prior to the effective date of Georgia's new regulations, June 27, 1993. Therefore, all closures will require compliance with 40 CFR 258.1 standards.
8. Georgia's Rules have been changed to show .06(3)(e) instead of (f).
9. The statement on "wellhead protection" has been included on page 7 of the narrative.



Department of Law  
State of Georgia

MICHAEL J. BOWERS  
ATTORNEY GENERAL

40 CAPITOL SQUARE SW  
ATLANTA, GA 30334-1300

July 27, 1993

WRITER'S DIRECT DIAL  
(404) 656-7273  
FAX (404) 651-6341

**MEMORANDUM**

TO: Harold F. Reheis, Director  
Environmental Protection Division

FROM: Michael J. Bowers *myB*  
Attorney General

RE: Attorney General's Certification for RCRA  
Subtitle D Application - Solid Waste Permit  
Program

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I hereby certify pursuant to my authority as Attorney General that in my opinion the laws of the State of Georgia cited in its application for a determination of permit program adequacy are contained in statutes or regulations lawfully enacted and fully effective at the time this Statement is signed. The citations to the applicable laws and regulations are provided in Georgia's Application for Solid Waste Permit Program Approval dated July 27, 1993.

Please understand that the foregoing is a legal opinion of this author and not a ruling of law and that a court could reach a contrary conclusion. This opinion is provided to you for the purpose of assisting you in the exercise of your authority under the Georgia Comprehensive Solid Waste Management Act and should not be relied upon by third parties in the assessment of their legal rights and obligations under the Georgia Comprehensive Solid Waste Management Act and the Rules and Regulations promulgated thereunder. Notwithstanding the fact that this opinion is not to be used by third parties in the assessment of their legal rights and obligations, U.S. EPA is not precluded from asserting, and it is intended that it will assert,


Harold F. Reheis  
July 27, 1993  
Page 2

that this opinion is an authoritative interpretation of the Georgia Comprehensive Solid Waste Management Act and the Rules and Regulations promulgated thereunder.

  
MICHAEL J. BOWERS  
Attorney General

DATE: 7-27-93

PREPARED BY:

  
BARBARA H. GALLO  
Assistant Attorney General

/et

**Application to USEPA Region IV  
for Solid Waste Permit Program Approval  
in Accordance with  
Section 4005(c) of Subtitle D of the  
Resource Conservation and Recovery Act**

Georgia Department of Natural Resources  
Environmental Protection Division  
July 27, 1993

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### **List of Attachments**

Rules for Solid Waste Management, Chapter 391-3-4	
Official Code of Georgia Annotated (O.C.G.A.) Volume 10, Title 12, as amended through 1993	
Application For Solid Waste Handling Permit and Request For Site Suitability (SWM-0)	
Criteria for Performing Site Acceptability Studies for Solid Waste Landfills in Georgia (Circular 14)	
Inspection and Enforcement Procedures	
Municipal Solid Waste Landfill Evaluation Report	
Proposed EPD Manual for Methane Gas Monitoring	
Compliance Monitoring - Complaint Investigations	
Training and Certification of Operators and Regulatory Staff Personnel	
Georgia's Municipal Solid Waste Landfills: 1992 Overview Report	
Comprehensive Municipal Solid Waste Landfill Survey	
Hydrologic Atlas #20 (includes Hydrologic Atlas #18)	
Rules for Hazardous Waste Management, Chapter 391-3-11	

## **I. Introduction**

In 1971 Georgia's solid waste was disposed of in 416 open dumps and four municipal solid waste incinerators. A survey of these open dumps revealed that 29 percent required no soil cover, 81 percent allowed open burning, 78 percent had rodent problems and 16 percent had potential groundwater pollution problems.

Efforts to effectively manage solid waste in Georgia appeared with the enactment of the Georgia Solid Waste Management Act of 1972. Responsibilities for implementing the solid waste requirements under this law were assigned to the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources (DNR).

Since the passage of the 1972 law, all four of the solid waste incinerators, which could not meet the air quality standards enacted during the 1970's, have been closed. Since then, a 500 ton per day mass burn waste-to-energy facility has been constructed and is in operation in Savannah. So too, all 416 open dumps have been closed and replaced by 181 permitted municipal solid waste landfills. Thus, the 1972 law has been effective in addressing concerns with solid waste as they were understood when the law was passed.

Conditions relating to municipal solid waste in Georgia have changed since 1972. There are some two million more people in the state today and the per capita production of municipal solid waste has increased significantly. The Solid Waste Management Act and the Rules for Solid Waste Management have been amended on numerous occasions since 1972. The current law and rules require municipal solid waste landfills to obtain permits which require that these landfills be designed and constructed utilizing liners and leachate collection systems, groundwater monitoring systems, and numerous other environmental safeguards.

The current rules also require owner/operators of municipal solid waste landfill to comply with specific siting criteria, design and operation standards, performance standards, closure and post closure standards and financial responsibility standards.

In order to obtain full U.S. E.P.A. approval of Georgia's solid waste permitting program, revision of the Rules for Solid Waste Management, Chapter 391-3-4 were required. These revisions were adopted by the Georgia Board of Natural Resources in May, 1993 and became effective June 27, 1993.

## **II. Jurisdiction and Responsibilities**

The Official Code of Georgia Annotated (O.C.G.A.) Volume 10, Title 12, as amended through 1993, specifically O.C.G.A. 12-8-23.1, gives the Director of the Environmental Protection Division of the Department of Natural Resources the primary responsibility for implementation of the solid waste management program. The Director is also instructed to coordinate his activities with those of other state agencies and local political jurisdictions to achieve a unified and effective solid waste management program. Finally, under state law, it is the responsibility of the State Attorney General's office to represent all state agencies.



### **III. Number of Municipal Solid Waste Landfills**

At the present time there are 181 municipal solid waste landfills (MSWLF's) in Georgia. Of these, 164 are owned and operated by city and county governments and 17 are privately owned.

Ten of the facilities have synthetic liners and leachate collection systems and are the least likely to be affected by the implementation of CFR 40 Part 258 requirements. Another 56 facilities have less than one year of remaining capacity or have indicated they will close by October 9, 1993. The final 115 facilities have permitted capacity beyond October 9, 1993. This final group of sites will be most affected by CFR 40 Part 258 regulations.

There are also 61 new sites in the permitting or construction phase. All of these sites are to have synthetic liners and leachate collection systems. Of these 61 sites, 13 have been permitted and are under construction, one (1) has been permitted but its permit is under appeal and 33 are presently in the permitting process, either under design or requesting site suitability.

### **IV. Staff Resources for MSWLF Permit Program Implementation**

Georgia's solid waste programs are part of the Land Protection Branch. The staff resources available include programs at the central location in Atlanta and at four regional offices throughout the state (see Tables 1 and 2). The units at the central location are Solid Waste Permitting, Solid Waste Compliance and Planning and Waste Reduction.

Solid Waste Permitting is responsible for permit review and issuance, site suitability determination, plan review and construction inspections of new sites. Solid Waste Compliance is responsible for plan review of permit modifications for existing sites, compliance inspections in the first year of operation and assisting the regional personnel with compliance inspections. Planning and Waste Reduction is responsible for solid waste education, review of solid waste management plans of counties and municipalities and data management. All three contribute to the rule drafting process.

The four regional offices are responsible for inspections of existing facilities after the first year, complaint response, enforcement, and minor modification review. The specialists in the regional offices also do compliance work in water supply, water quality and air quality. However, the majority of time is spent on solid waste compliance. The time spent on solid waste is approximately 40 percent of each specialist's total work load.

Additional staff resources are available through the Attorney General's Office for assistance on any enforcement actions such as consent or administrative orders or other legal matters such as permit appeals. Other specialized support, such as geologic evaluation of site suitability or laboratory support, is provided by other branches within EPD. Adding up all the available staff resources, the total number of full-time person years for solid waste management equals 48.25.

**Table 1**  
**Solid Waste Staff Resources**  
**Atlanta Office**

Land Protection Branch  
John Taylor - Branch Chief  
Emily Cook - Secretary

Solid Waste Permitting

Jim Dunbar - Program Manager  
Mark Smith - Unit Coordinator  
Harold Gillespie - Unit Coord.  
Jeff Cown - Engineer  
Dene Hart - Secretary  
Stacey Hodge - Engineer  
Barbara Howard - Engineer  
Steven Johnson - Engineer  
Tiffany Klebe - Engineer  
Dennis Perriello - Geologist  
Gurdial Singh - Engineer  
Mark Wolfe - Engineer

Solid Waste Compliance

Lewis Tinley - Program Manager  
Don McCarty - Unit Coordinator  
Christy Easter - Geologist  
David Gibbons - Engineer  
Denny Jackson - Specialist  
Jill Markcum - Secretary  
Kristi Osburn - Technician  
Roger Patrick - Geologist  
Jeff Royce - Engineer  
Tom Shillock - Specialist  
Gladys Turner - Secretary  
Carole Wintle - Geologist

Planning and Waste Reduction

Rick Cothran - Program Manager  
Charles Evans - Specialist  
Susan Hendricks - Specialist  
Pam Thomas - Specialist

**Table 2**  
**Solid Waste Staff Resources**  
**Regional Offices**

Bob Bishop - Program Manager

North Region

Clark Reynolds- Unit Coordinator  
Bob Childers - Specialist  
Roger Denney - Specialist  
Steve Duncan - Specialist  
Talina Gray - Secretary  
George Harris - Specialist  
Melinda Jackson - Secretary  
Thomas Manget - Specialist  
Marcus Mincey - Specialist  
Aimee Mitchell - Secretary  
Bob Mitchell - Specialist  
Danny Rice - Specialist  
Michael Rodock - Specialist  
Mickey Spinks - Specialist  
Susan Wagner - Specialist  
Kappitola Williams - Specialist  
Eddie Wilson - Specialist  
Vacant - Specialist  
Vacant - Specialist

Middle Region

Ed Jarrett - Unit Coordinator  
Clayton Bristol - Specialist  
Marvin Grisham - Specialist  
Bobby Head - Specialist  
John Henson - Specialist  
Freida Joiner - Secretary  
Arthur Welling - Specialist  
Vacant - Specialist  
Vacant - Specialist

Southeast Region

Larry Rogers - Unit Coordinator  
James Crosby - Specialist  
Bruce Foisy - Specialist  
Albert Frazier - Specialist  
Marie Humphreys - Specialist  
Clifford Knowlton - Specialist  
Arthur Lungwitz - Specialist  
Gary Reynolds - Specialist  
Wanda Roberts - Secretary  
Frank Van Arsdale - Specialist

Southwest Region

Thomas Payne - Unit Coordinator  
Chris Boswell - Specialist  
Jean Brown - Specialist  
Robert Hale - Specialist  
William Lucas - Specialist  
Annie Sanders - Specialist  
Mary Sheffield - Specialist  
Kenneth Shepard - Specialist  
William Tanner - Specialist  
Karen Williams - Secretary

## **V. Permitting Requirements**

O.C.G.A. 12-8-24(a) of the Georgia Comprehensive Solid Waste Management Act and Chapter 391-3-4-.02 of the Rules for Solid Waste Management both require that no person shall engage in solid waste handling or construct or operate a solid waste handling facility without first obtaining a permit from the Director of the Georgia Environmental Protection Division (EPD) authorizing such activity. The solid waste handling permit (blank permit attached) includes both design and operating conditions.

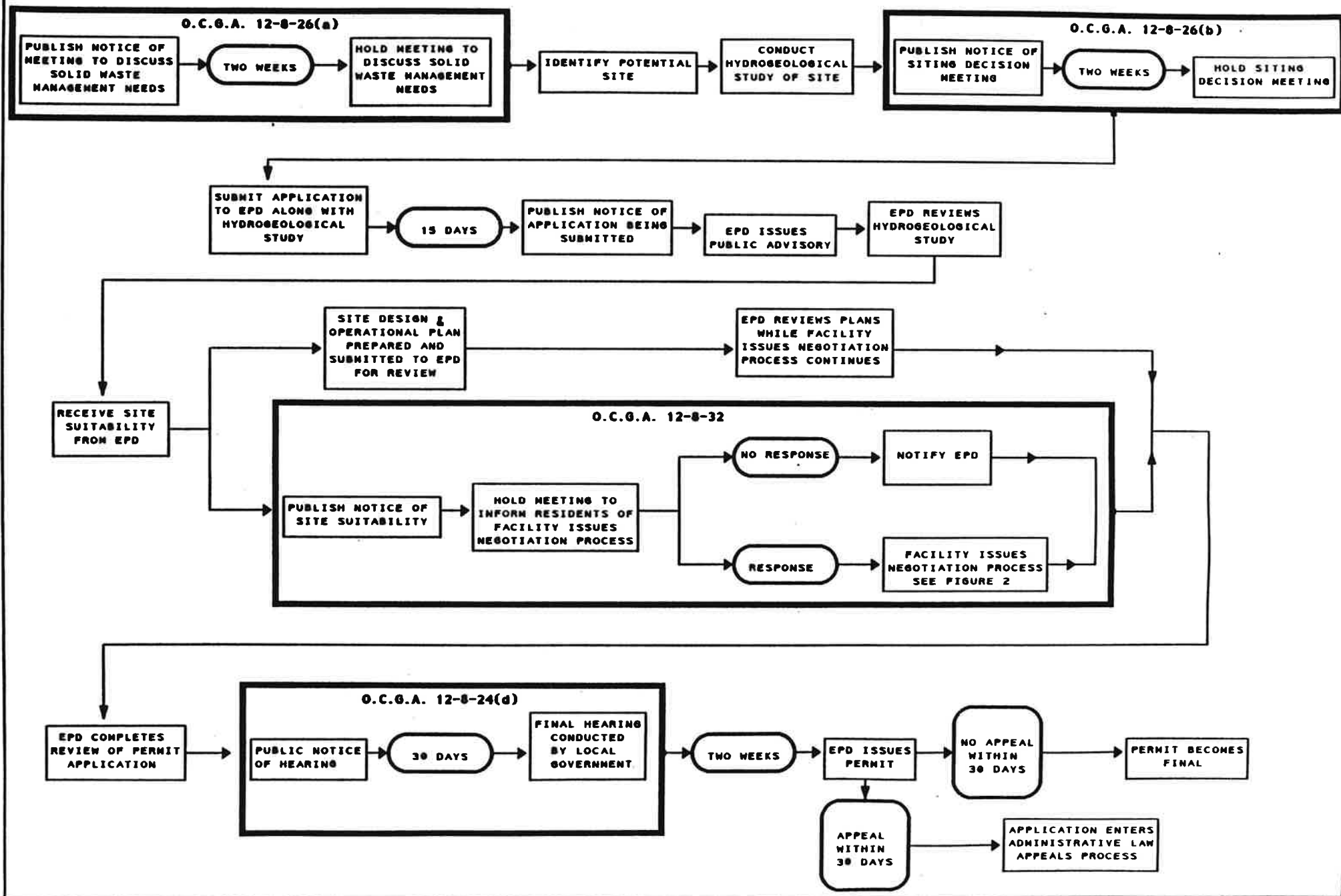
O.C.G.A. 12-8-23(1)(b) gives to the Board of Natural Resources the authority to adopt rules and regulations prescribing the procedures to be followed in applying for solid waste handling permits and requiring the submission of pertinent information deemed relevant in connection with the issuance of such permits. Chapter 391-3-4-.02(6) requires that all applications for permits and major permit modifications shall be on forms prescribed by EPD and shall be accompanied by all pertinent information as EPD may require.

### **Permitting Procedures for New MSWLF's**

The permitting procedures as required by O.C.G.A. 12-8-20 and the Rules for Solid Waste Management, Chapter 391-3-4, for a new municipal solid waste landfill (MSWLF) are outlined in Figure 1. The process begins with public participation. Any city, county, group of counties or authority beginning the process to select a site for a MSWLF first calls a public needs meeting to discuss the waste management needs of the local government or region and to describe the siting process to be followed. The notice of the public needs meeting is published at least once per week for two weeks immediately preceding the meeting in a newspaper of general circulation serving such municipality or county. If the proposed facility will serve a regional solid waste management authority established in accordance with O.C.G.A. 12-8-53, the notice procedure discussed above is provided in each jurisdiction participating in such authority. The public needs meeting is not required to be held if the proposed facility is to be privately owned.

The next step in the process is the siting decision meeting. The governing authority of any county or municipality taking action resulting in a municipal solid waste landfill must take such action in a public siting decision meeting. Notice of the meeting is published in a newspaper of general circulation serving such city or county at least once per week for two weeks immediately preceding the date of such meeting. The notice of such meeting must state the time, place and purpose of the meeting. The siting decision meeting must be conducted by the governing authority taking the action. Siting decisions include, but are not limited to, such activities as the final selection of the property for landfiling and the execution of contracts or agreements pertaining to the location of the MSWLF within the jurisdiction, but do not include zoning decisions. The siting decision meeting is required for both publicly and privately owned proposed MSWLF's if action by the local governing authority is required.

**FIGURE 1: PERMITTING PROCEDURES FOR NEW MSWLF'S**



The following permitting procedures are applicable to both publicly owned and privately owned landfills. After a site selection has been made, a site assessment report addressing the criteria outlined in the "Criteria for Siting", Rule 391-3-4-.05 is prepared by a professional geologist or professional geotechnical engineer registered in Georgia. Additionally, municipal solid waste landfill siting requirements shall consider wellhead protection areas and wellhead protection requirements established pursuant to Georgia's EPA-approved Wellhead Protection Program. The site assessment report is submitted to the Division for review at the time of submitting a permit application.

When all the applicable material is gathered an "Application For Solid Waste Handling Permit and Request For Site Suitability (SWM-0)" can be submitted to the Division. The permit application is accompanied by a statement that the applicant either owns the property on which the MSWLF is to be located or has the permission of the owner to use the property for a MSWLF; in the case of a regional landfill or a landfill serving more than one county, a list of the areas to be served; written verification of zoning compliance as required by Rule 391-3-4-.05(1)(a) and a site assessment report as described above.

Upon receipt of an application, EPD issues a public advisory which is matter of policy, not a regulatory requirement. The public advisory briefly describes the application that has been submitted. The public advisory is issued with a thirty day public comment period, which may be extended by the Director. Public comments on the proposed application may be submitted to the Director during this comment period. The Director will take the comments into consideration during the review of the application. The public advisories are issued monthly and are mailed to concerned parties that have requested to be on the public advisory mailing list. In order to be placed on the mailing list, a request must be submitted to the Director's office. After issuing the public advisory, EPD begins the review of the site assessment report to demonstrate that it meets the criteria outlined in Rule 391-3-4-.05 and Circular 14 (attached).

Upon submission of an application for a proposed MSWLF, the applicant will within 15 days of the submission publish the public notice of the application in the following manner. If the application is for a facility serving no more than one county, the public notice will be published in a newspaper of general circulation serving the host county, and each local government in the county and the regional development center will be further notified in writing of the permit application. If the application is for a facility serving more than one county, the public notice will be published in a newspaper of general circulation serving each affected county, and each local government within said counties and the regional development center will be further notified in writing of the permit application. In both cases the public notice will be prominently displayed in the courthouse of each notified county.

EPD will review the application and supporting data, make a determination as to the suitability or unsuitability of the proposed site for a MSWLF, and notify the applicant and the host local government if different from the applicant, in writing, of its determination. If the proposed site is unsuitable, EPD will notify the applicant and the host local government and the process will end. If EPD notifies the applicant and the

host local government that the proposed site is suitable, then the host local government will initiate a local notification and negotiation process as outlined in O.C.G.A. 12-8-32.

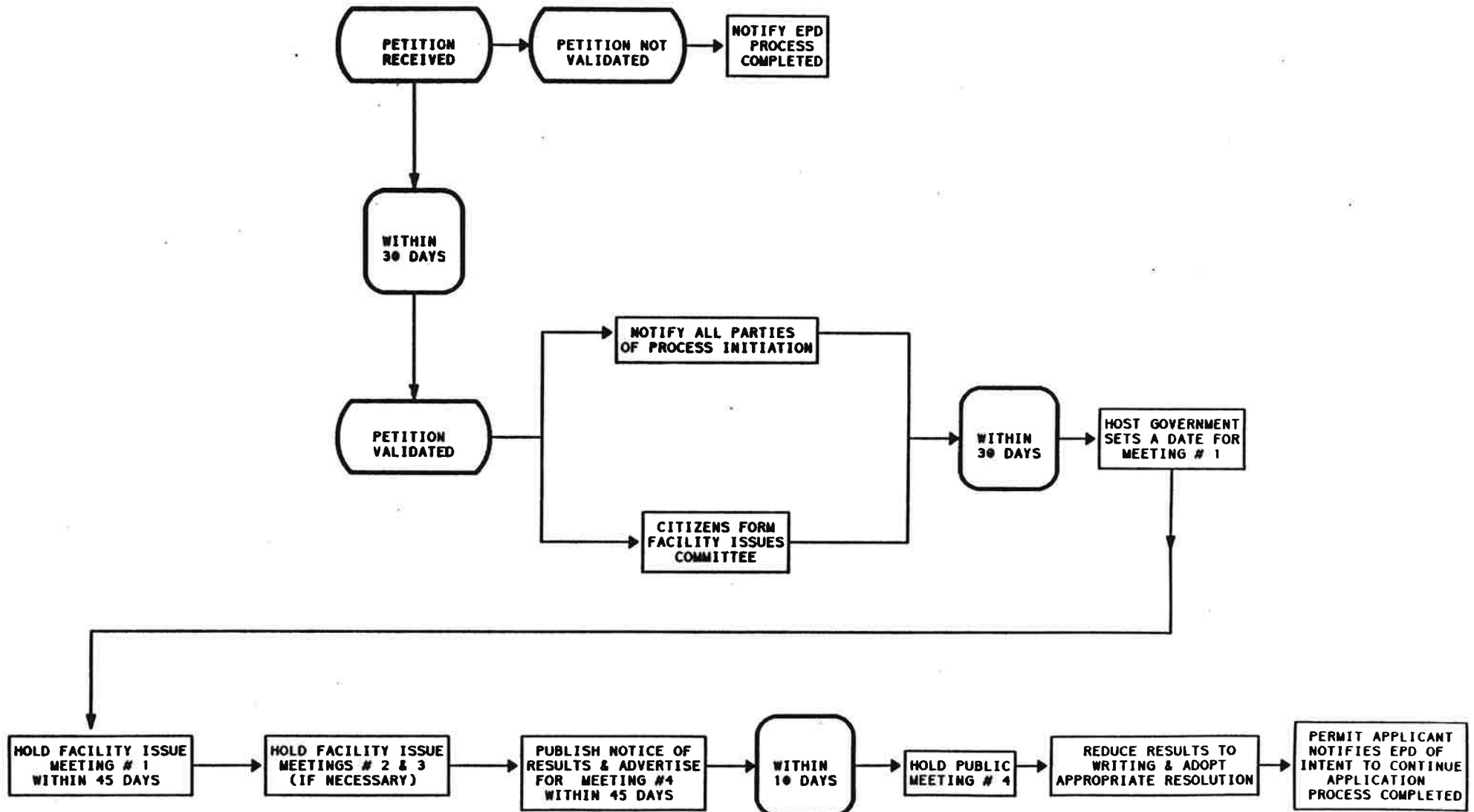
The local notification and negotiation process outlined in O.C.G.A. 12-8-32 begins with receipt from EPD of notice that the proposed site is suitable for a MSWLF. The site suitability notice from EPD will contain specific site limitations that will be utilized by the applicant in the design of the MSWLF. Upon receipt of the site suitability notice, the applicant will within 15 days of receipt of the notification publicize the fact by public notice in the same manner as described previously in the submission of the application. Further, within 45 days of receipt of the site suitability notice from EPD, the host local government for the proposed site will advertise and hold a public meeting to inform affected residents and landowners in the area of the proposed site and of the opportunity to engage in a facility issues negotiation process. The advertisement will be in the same manner as described previously in the submission of the application.

Following the notification by EPD of the proposed site's suitability and during the local notification and negotiation process, the applicant will proceed with the design of the proposed MSWLF in accordance with criteria outlined in Rule 391-3-4-.07. After completion the design and operational plan for the proposed MSWLF will be submitted to EPD for review. EPD will initiate and continue to review the applicant's permit application, including but not limited to the design and operational plan, but no action with respect to permit issuance or denial will be taken until such time as the local notification and negotiation processes have been exhausted. EPD will not be a party to the negotiation process because technical environmental issues which are required by O.C.G.A. 12-8-20 and Chapter 391-3-4 cannot be considered negotiable items in the negotiation process.

Within 30 days following the local notification and negotiation process public meeting described above, a facility issues negotiation process will be initiated by the host local government upon receipt of a written petition by at least 25 affected persons, at least 20 of whom shall be registered voters or landowners in the host jurisdiction. An affected person means a registered voter of the host local government or of a county contiguous to such host local government or a landowner within the jurisdiction of the host local government. Multiple petitions may be consolidated into a single negotiating process. The facility issues negotiation process is described in O.C.G.A. 12-8-32 and outlined in Figure 2. If no petition is received within the 30 days, the host local government will notify EPD and the permitting process will continue. If the negotiation process is entered into, upon receipt of a written notification that the facility issues negotiation process has been concluded, and upon written notification from the permit applicant that he wishes to pursue permitting of the MSWLF for which the application has been filed, EPD will proceed to process the permit application.

During the facility issues negotiation process, EPD has continued its review of the permit application. Part of the permit application is a design and operational plan with supporting data for the proposed MSWLF which is prepared by a professional engineer registered to practice in Georgia. EPD reviews the design and operational plan to assure that it meets all the requirements of Rule 391-3-4-.07. When the design and operational plan and other portions of the permit application have been determined to

**FIGURE 2: FACILITY ISSUES NEGOTIATION PROCESS**  
**O.C.G.A. 12-8-32**





be complete and acceptable, the public participation of the permit application can be completed with the final public hearing.

The governing authority of the county or municipality will hold a public hearing not less than two weeks prior to the issuance of the permit for the municipal solid waste landfill. The notice of the hearing will be posted at the proposed site and advertised in a newspaper of general circulation serving the county or counties in which the proposed site will be located, at least 30 days prior to the public hearing. A typed copy of the hearing transcript will be submitted to EPD for review. EPD will review the comments and address any environmental or public health issues that are regulated by O.C.G.A. 12-8-20 and Chapter 391-3-4.

Prior to issuance of the permit for the MSWLF, EPD will require written verification furnished by the applicant that the proposed site is still in compliance with local zoning or land use ordinances, if any. This written verification was submitted with the application but needs to be reaffirmed in case the zoning or land use ordinances have changed during the permitting process. Also, prior to permit issuance, the applicant will submit verification that proposed MSWLF is consistent with the local or regional solid waste management plans developed in accordance with O.C.G.A. 12-8-31.1 and that the host jurisdiction and the jurisdictions generating solid waste destined to the MSWLF can demonstrate that they are actively involved in and have a strategy for meeting the state wide goal of waste reduction by July 1, 1996. The verification will consist of letters from the host jurisdiction and generating jurisdictions verifying consistency with the approved local or regional solid waste management plans.

When the applicant has completed and met all the requirements in O.C.G.A. 12-8-20 and Chapter 391-3-4 for a solid waste handling permit for a MSWLF, the Director of EPD can issue a permit to construct and operate the proposed MSWLF under the conditions set forth in the permit. This permit cannot be issued until two weeks after the final public hearing.

Once the solid waste handling permit is issued the Director notifies the legal organ and the chief elected official of the host local government in which the facility is to be located. At that time the applicant can proceed to construct the facility. During the first thirty days the permit may be appealed. If no appeal is received the permit becomes final. If an appeal is received within the 30 days, no further construction or operation may take place under the permit and the permit enters into the appeals process as specified by the Georgia Administrative Procedures Act.

#### Permitting Procedures for Modification of Existing MSWLF's

Permit modifications at the request of the permittee of existing municipal solid waste landfills are classified as either major or minor under the requirements set forth in Rule 391-3-4.02(4). Major modifications are changes which substantially alter the design of the facility, management practices, the types of wastes being handled, or the method of waste handling, and due to the nature of the changes, would likely have an impact on the ability of the facility to adequately protect human health and the environment.

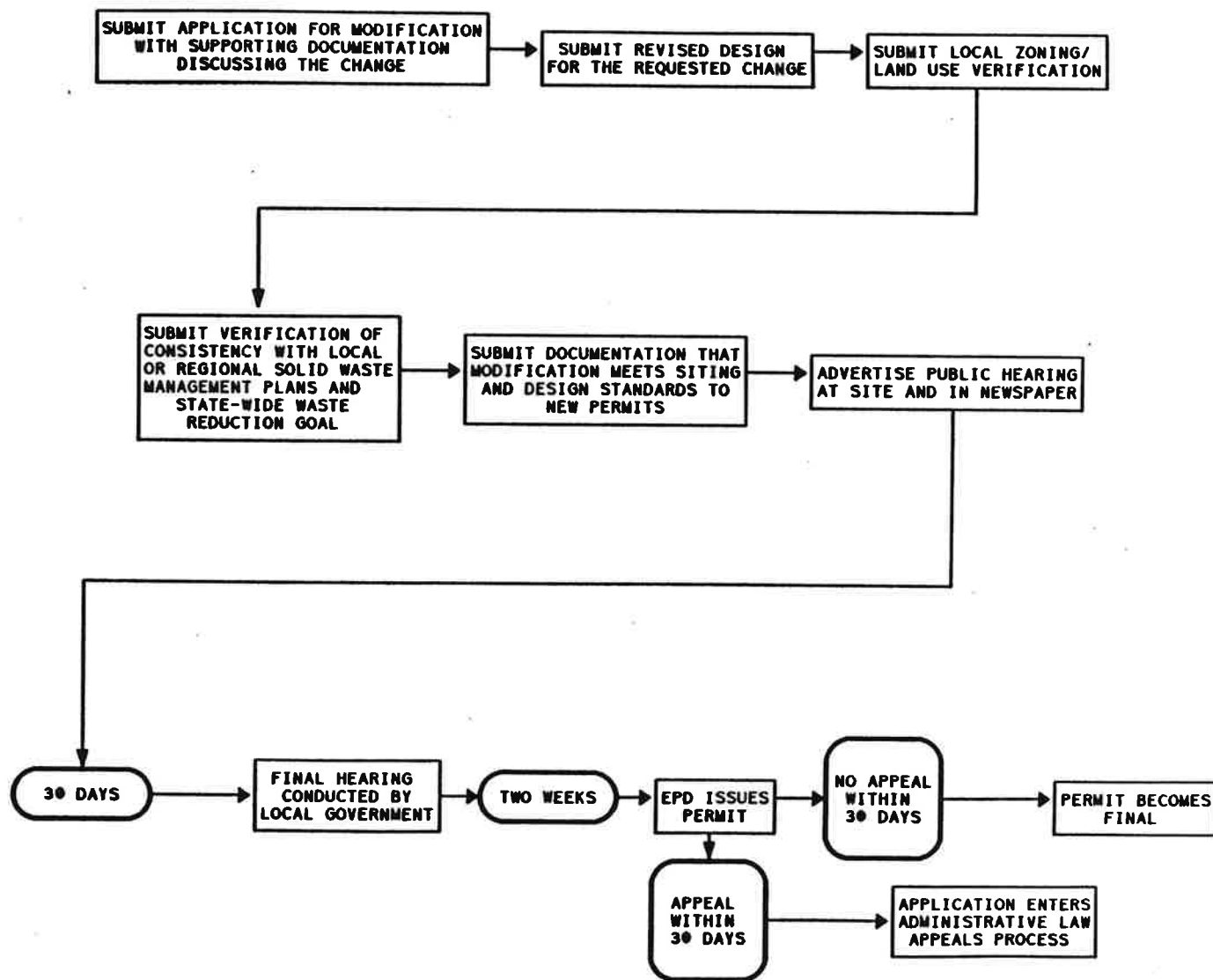
Minor modifications are changes that do not substantially alter the permit conditions, reduce the capacity of the facility to protect human health or the environment, or that enable a permittee to respond in a timely manner to common variations in the type and quantities of wastes managed, technological advancements, or changes necessary to comply with new rules where these changes can be implemented without substantially changing design specifications or management practices in the permit.

Major modifications include, but are not limited to vertical expansions of existing MSWLF's; horizontal expansions of existing MSWLF's which are allowed by the most current unexpired letter of site suitability; the addition of a new solid waste process to the MSWLF including, but not limited to the processes listed in Rule 391-3-4-.02(4)(a)3.; a change of a site suitability requirement which could impact the original siting of the MSWLF; selection of a corrective action plan; and any other modification that the Director determines to meet the criteria in Rule 391-3-4-.02(4)(a). Since major modifications can have a substantial impact on a MSWLF, they require a more intensive review and public participation than minor modifications.

Major modifications of solid waste handling facilities are subject to the following requirements (see Figure 3). A completed application for the permit modification with supporting documents that describe the exact change to the permit conditions and explain why the change is needed will be submitted. A revised design for the requested change to the MSWLF will need to be submitted for review by EPD. The applicant must provide written verification as required by Rule 391-3-4-.05(1)(a), that the MSWLF as proposed to be modified, conforms to all local zoning and land use ordinances, if any. The applicant must provide written verification that the MSWLF, as proposed to be modified, is consistent with the local or regional solid waste management plans as required by O.C.G.A. 12-8-31.1 and that the host jurisdiction and the jurisdictions generating solid waste destined to the MSWLF can demonstrate that they are actively involved in and have a strategy for meeting the state-wide goal of waste reduction by July 1, 1996. The verification will consist of letters from the host jurisdictions verifying consistency with the approved local solid waste plan. Also, the applicant must provide written verification that a public hearing was held by the governing authority of the county or municipality in which the MSWLF requesting the modification is located, not less than two weeks prior to granting approval of the modification. The written verification should include that the notice of the public hearing was posted at the site of the MSWLF and advertised in a newspaper of general circulation serving the county or counties in which the MSWLF is located at least thirty (30) days prior to such hearing. A typed transcript of the hearing will be furnished to EPD by the applicant. The final requirement is with the exception of major modifications granted under Rule 391-3-4-.02(4)(c)7., all major modifications of MSWLF's will meet the siting and design standards applicable to new permit applications in effect on the date the modification is approved.

Minor modifications do not substantially alter the MSWLF, so public participation is not required. A review of the minor modification is required by EPD but is not as extensive as the review required for major modifications. The following requirements need to be met for a minor modification. The permittee must submit a written request for the minor modification with accompanying supporting documents which describe the

**FIGURE 3: PERMITTING PROCEDURES FOR MAJOR MODIFICATIONS OF MSWLF'S**



change to be made and explaining why the change is needed. If applicable, the permittee must submit a revised design for the requested change. If the minor modification involves a change in ownership, documentation that modification is in compliance with Rule 391-3-4-.02(8)(a). Requests for minor modifications will be deemed approved by the EPD 45 days after receipt of a complete request for the modification unless, prior to that date, EPD notifies the permit holder that the request for modification is denied.

#### Affect of New Regulations on Existing MSWLF's

Now that the new regulations have been adopted it is necessary to ensure that existing MSWLF's with existing permits comply with the new regulations. This is true in the case of MSWLF's which are open and ones which are presently closed or near closure.

Rule 391-3-4-.04(2) ensures that existing MSWLF's will comply with the new regulations. This rule states that provisions of the Rules for Solid Waste Management apply to all persons presently engaged in solid waste handling as well as all persons proposing to engage in solid waste handling. Therefore, when the new regulations become effective all permittees will be required to abide by them and the re-opening of permits will not be necessary. If, however, the re-opening of permits does become necessary for any reason, Rule 391-3-4-.02 (3) allows the Director to modify or revoke any permit issued pursuant to O.C.G.A. 12-8-24 if the holder of the permit is found, among other things, to be performing any activity which creates a threat to human health or the environment. If the holder of the permit does not follow the new regulations it can be deemed that the activity creates a threat to human health or the environment.

The strategy affecting closure of MSWLF's will depend upon the time of closure. If the MSWLF closed prior to the new regulations but after October 9, 1991 it was advised prior to closure that it should meet the final cover requirements of Subtitle D. However, if it chose only to meet the state regulations it was allowed to do so as Georgia did not have the power to enforce the Subtitle D requirements. Since those particular MSWLF's are already legally closed, Georgia cannot force them to meet the new regulations. (Note: A records search revealed that no sites in Georgia accepted waste after October 9, 1991 and closed prior to the effective date of Georgia's new regulations, June 27, 1993.)

MSWLF's that stopped taking waste prior to the adoption of the new regulations but did not officially close will be required to meet the closure requirements of the new regulations under Rule 391-3-4-.04 (2). This is also true for MSWLF's which have closed out portions of the site but are still taking waste. All portions of the site will have to meet the new regulations.

## **VI. Compliance and Enforcement Program**

The Georgia Environmental Protection Division (EPD) permits all facilities that handle solid wastes. The compliance process for all regulated municipal solid waste landfills (MSWLF) has been developed pursuant to the requirement of the Georgia Solid Waste Management Rule 391-3-4 and the Georgia Comprehensive Solid Waste Management Act, O.C.G.A. 12-8-20, et seq., as amended. The Rule incorporates requirement of 40 CFR Part 258 as pertains to compliance monitoring.

The Environmental Protection Division, in cooperation with the Georgia Municipal Association and the Association of County Commissioners of Georgia, conducted a comprehensive survey of all facilities permitted as municipal landfills to determine the potential impact of the federal Subtitle D requirements on municipal solid waste disposal operations. This information was utilized to draft changes in state solid waste regulations to meet the new federal compliance and enforcement standards. An overview of the survey conducted and the results obtained are attached.

Responsibility for the implementation of the compliance process is handled by administrative and technical support through the EPD Land Protection Compliance Program (LPCP). EPD Region Operation Program provides field evaluation in concert with the Land Protection Compliance Program to determine the compliance status of the facility with respect to the Act and Rules. The Land Protection Compliance Program consists of 12 members and the regional compliance effort consists of 48 members which spend approximately 40% of their time on solid waste compliance. The compliance process is also supported by other EPD Branches, and legal support from the Law Department.

A description of the inspection monitoring and enforcement procedures is included in the attached guidance document entitled, "Inspection and Enforcement Procedures for Georgia Solid Waste Management Program". This document details how the compliance and enforcement program functions to insure statutory and regulatory compliance for the regulated community. The comprehensive compliance program for inspections, notification of violation, follow-up of violations, documentation and enforcement activities and coordination with other agencies, are detailed in this document.

## **VII. Inspection and Enforcement - General**

The construction phase at the facility commences upon issuance of the permit. During this phase, a Division staff engineer schedules and conducts construction inspections at the disposal site when the following milestones have been achieved:

1. the erosion control structures, including sediment basins, are in place;
2. initial fill areas have been constructed and the sub-base installed, but prior to liner installation;
3. the liner installation has begun;

4. protective cover for the liner and leachate collection system have been installed;
5. groundwater monitoring wells are being installed;
6. all initial construction is completed and the site is ready to accept waste.

The approved Design and Operational Plan requires a quality assurance and control program to be submitted to the Division for approval prior to installation of the liner.

Prior to receipt of solid waste, the Division must be provided with written certification by a professional engineer licensed to practice in Georgia that the facility has been constructed in accordance with the approved permit. Unless notified otherwise by the Division, within 15 days of receipt by the Division of the written certification the facility owner or operator may commence disposal of solid waste.

Compliance monitoring commences upon the facility's receipt of waste. The Division staff compliance unit conducts the initial inspections and assists the regional compliance officer during this transitional phase. Upon the completion of the transitional phase, the regional compliance officer assumes responsibility and conducts compliance evaluations of the facility.

All MSWLF facilities receive an initial inspection after which they are then placed on an inspection schedule. The type schedule depends upon the compliance status of the facility. Compliance evaluation of facilities which reveal violations of the Act or Rules may result in enforcement proceedings by the respective regional compliance officer having responsibility for review of the facility. Priorities for follow-up of all violations are defined in the Inspection and Enforcement Procedures. The compliance evaluations are conducted by completing the Municipal Solid Waste Landfill Evaluation Report (attached). The evaluation report has been developed to 1) insure conformity with the provisions of the Act/Rules; 2) establishes a format that provides the flexibility necessary to incorporate additional compliance provisions as changes occur, i.e., incorporation of the 40 CFR Part 258 provisions; and, 3) to insure that uniform and consistent standards for evaluations are adhered on a state-wide basis in the conduct of compliance monitoring, evaluation and reporting of compliance activities.

The compliance monitoring program is augmented with information received from concerned citizens in the form of complaints. Complaints are referred to the appropriate regional compliance officer or the EPD Branch. The respective regional compliance officer records and coordinates complaint activities and assures implementation and follow-up on complaints received according to prescribed procedures. A complaint form and the prescribed procedures are attached. Where violations of the Act or Rules have been observed and documented, the regional compliance officer takes enforcement actions appropriate to return the facility back to a compliant status.

Compliance and enforcement, where necessary, are broad processes whereby the Division accomplishes its overall objectives. It is a systems approach which employs notices of violation, technical assistance, conference, conciliation, persuasion, directives, administrative orders, hearings, and civil court proceedings. Enforcement can begin with the notification of a violation and carry through to the collection of civil penalties.

Because of the different parts of the enforcement process which may be applied in any combination, enforcement may get to be a long and laborious task. This requires a strong commitment on the part of staff members in order to reach the goal. It also means that the process can't be shortened by deleting everything between the first notification of a violation and taking legal action, unless such is demanded by the situation in very infrequent cases. Response to violations will occur as either a Notice of Violation (NOV) Order (Consent or Administrative) or Civil Action. In determining the appropriate action to be taken the magnitude of the violation, and whether or not the owner/operator has made good faith efforts to comply are considered. When the appropriate action is decided upon, follow-through must be taken in accordance with the following guidance. The following enforcement actions may be taken as appropriate.

1. Compliance Status Letter - The official notification that a facility is in compliance with the solid waste regulations. This letter may be signed by the Compliance Office and mailed to the facility after the Unit Coordinator has reviewed and approved the inspection trip report. This letter should be mailed to the facility within 30 days of the inspection, record review, etc.
2. Notices of Violation (NOV'S) - When it is determined that a facility is in violation of a Rule, permit condition, or other legal requirement and that a NOV is the appropriate enforcement action, the facility should be promptly notified in writing, within 30 days by Certified Mail - Return Receipt Requested. The Program Manager should sign the first NOV, and the Branch Chief should sign any subsequent NOV. For minor violations, the Unit Coordinator should sign the first NOV, and the Program Manager should sign any subsequent NOV. The initial NOV letter should point out the violations related to specific Rules and require the source to correct the violations by certain dates (normally 30 days) or ask for submittal of an compliance schedule (for more complex problems). If the initial NOV letter does not bring the facility into compliance within the time allocated in the NOV, a second NOV letter should be prepared. The second NOV letter should explain the continuing or additional violation(s) and the fact that the Division is attempting to work cooperatively with the facility to bring them into compliance. It should state that if proper and timely cooperation is not exhibited by the facility, formal enforcement proceedings may have to be recommended. (The specific type of enforcement should not be identified.)
3. Enforcement Orders - If the initial enforcement action was a NOV and it did not bring the facility into compliance within an acceptable time frame, a consent or administrative order should be developed. In some cases, orders may be issued immediately with no Notice of Violation if the violation is serious enough and prompt action is required, however,

regardless of whether the order is signed initially or after an NOV has been issued, issuance should be within 90 days of violation documentation. A penalty may be levied in the Order if prompt action is not given to a violation. A draft Consent or Administrative Order and background documentation indicating the type of violations, the times, the type of evidence available, and any previous NOV's should be provided to the Branch Chief. An Order should contain background "Whereas" clauses and an "Ordered" or "Agreed" list of compliance actions plus any suggested monetary penalty ("settlement", if a Consent Order). The proposed Order will then be discussed with the director. (Prior to final signatures and execution by the director, all proposed Orders will be maintained in the EPD Confidential Files.) A copy of the final, signed Order is sent to the facility with a cover letter from the director. The original signed Order is kept in the director's office.

4. Civil Action - Injunctions in State Court may be sought to halt a dangerous situation or operation. The division director will be closely involved in these cases and will work closely with the Attorney General's office.

If questions arise about a situation under active enforcement by the division, details should not be discussed with the news media since it may jeopardize successful handling of the case. In all other cases, the EPD files are open to the public and may be reviewed and/or copied with appropriate costs recovered.

Testimony in Legal Cases - No division staff member will provide any testimony, or records for a legal matter which is not being handled for EPD by the State Law Department, unless he has received a proper subpoena. If a subpoena is received, the Branch Chief must immediately be contacted, who will discuss the issue with the Director. No testimony or file information is to be provided by a staff member in a contested legal case unless approved by the Branch Chief or Director.

## **VIII. Inspections**

The provisions of O.C.G.A. 12-8-29.1 and O.C.G.A. 12-8-24(e) grant authority to the director or his duly authorized representative to enter property for inspection and investigation of conditions relating to solid waste handling and to inspect any generator in Georgia to determine whether that generator's waste is acceptable for the intended handling facility.

Under O.C.G.A. 12-8-27, the director and his designees are authorized and shall be allowed to inspect in any state the generators, collectors, processors, transporters and disposers of special solid waste and take appropriate samples.



## **IX. Investigations and Monitoring**

Under O.C.G.A. 12-8-23.1 (a)(4), the director is authorized to make investigations, analyses and inspections to determine and ensure compliance. Code section (a)(12) further requires any person who is engaged in solid waste handling subject to the permit by rule provision of O.C.G.A. 12-8-23.1 to notify the division in writing within a reasonable number of days which the director shall specify, the location and general description of such activity, identify the waste handled and give any other information which may be relevant, under such conditions as the director may prescribe.

The director has authority to conduct monitoring or testing under O.C.G.A. 12-8-23.1(a)(4) which grants authority to make "analyses" to ensure compliance.

Chapter 391-3-4-.07 (3)(h) of the Rules requires the owner or operator to conduct self-monitoring activities to determine the concentrations of landfill gases and ensure that established performance standards are met. Guidance for this compliance activity is provided in the Proposed EPD Manual for Methane Gas Monitoring at municipal solid waste disposal facilities.

Chapter 391-3-4-.07(1)(l) of the Rules require the facility design include a groundwater and surface water monitoring plan. The surface water monitoring plan shall be designed to determine the impact of the facility on all adjacent surface waters. The design of the groundwater monitoring plan shall be in accordance with the requirements of Groundwater Monitoring and Corrective Action, as provided in Rule 391-3-4-.14. This rule incorporates the standards for Groundwater Monitoring and Corrective Action contained in Subpart E of 40 CFR Part 258.

## **X. Self-Monitoring**

Under O.C.G.A. 12-8-24.1 operators and inspectors of municipal solid waste disposal facility are required to be certified. A certification program is developed by the director in cooperation with the University System of Georgia. The division may classify all municipal solid waste disposal facilities required to have operators qualified under this part with due regard to size, type, character of waste to be disposed of, and other physical conditions affecting such municipal solid waste disposal facilities according to skill, knowledge and experience that the operator in responsible charge must have to operate the facilities successfully so as to protect the public health and welfare and prevent environment problems (attached). Certification is granted by the division, all examinations and courses used to determine the knowledge, ability and judgement of applicant shall be approved by the division. The director may investigate the actions of any operator and may revoke the certificate of any operator when the director finds that the operator has practiced fraud or deception; that reasonable care or judgement on the application of knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly.

## **XI. Warrants-Access Inspections**

The provisions of O.C.G.A. 12-2-2(d)(1)-(7), inclusive specifies conditions under which an inspection warrant may be issued as required by the constitution and laws of the United States or the State of Georgia. The director or any person authorized to make inspections for the division may require the issuance of a warrant to make an inspection under laws administered by the director. This code section grants the director or any authorized person the authority to gain access to any facility and/or premises where records are maintained and inspect the same, as required.

## **XII. Enforcement**

The director is granted the power and duties under O.C.G.A. 12-8-23.1 to exercise general supervision over the administration and enforcement of all rules and regulations, orders or permits promulgated or issued under this code section.

The provisions of O.C.G.A. 12-8-23.1 (a) 9 provides authority to the director to institute, in the name of the division, proceedings of mandamus, injunction, or other proper administrative, civil or criminal proceedings to enforce any violation of the code, the rules and regulations promulgated under the code or any orders or permits issued under this code section.

O.C.G.A. 12-8-30 provides authority to the director to issue an order to obtain corrective action. Whenever the director has reason to believe that a violation of any provision of the code or any rules and regulation has occurred, he shall attempt to obtain remedy with the violator or violators by conference, conciliation, or persuasion. In the event these efforts fail, the director may issue an order directed to the violation or violators. The order shall specify the provisions of the code or rule or regulation alleged to have been violated and shall order necessary corrective action be taken within a reasonable time to be prescribed in the order. The order issued by the director under this code section shall be signed by the director and shall become final unless the person or persons named therein request in writing a hearing no later than 30 days after such order is served on such person or persons.

O.C.G.A. 12-8-30.1 specifies the power of the director to issue an emergency order. Upon the receipt of evidence or finding that an emergency exists requiring immediate action to protect the public health, safety or well being, the director, with the concurrence of the Governor, may issue an order declaring the existence of such an emergency and requiring such action be taken to meet the emergency as the director specifies. Such orders shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but shall be afforded a hearing within 48 hours. The hearing and review of actions and orders is addressed in O.C.G.A.

12-8-30.2. All hearings on and review of contested matters and orders and any other enforcement actions or orders under this code section shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2.

Under O.C.G.A. 12-8-30.4, whenever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute any violation of this code section, the director may apply to the superior court of the county where such person resides, or, if such person is a nonresident of the state, to the superior court of the county where such person is engaged in or is about to engage in such act or practice, for an order restraining and enjoining such act or practice. Upon showing by the director that such person has engaged in or is about to engage in any such action practice, a temporary or permanent injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy by law.

Under O.C.G.A. 12-8-30.6, the director can bring an administrative action for the assessment of civil penalties against any person provided that person is a public authority or city or county government located within the boundaries of Georgia violating any provisions of the code or rules or regulations adopted pursuant to this part or intentionally or negligently failing or refusing to comply with any final or emergency order of the director issued as provided in this code section shall be liable for a civil penalty not to exceed \$1,000.00 for such violation and for an additional civil penalty not to exceed \$500.00 for each day during which such violation continues. Any person other than a public authority or city or county government located within the boundaries of Georgia guilty of the same violation shall be liable for a civil penalty not to exceed \$25,000.00 per day for each day during which such violations continue.

### **XIII. Intervention in Enforcement Proceedings**

State laws and regulations provide for public participation in the State enforcement process by providing either:

1. Authority which allows intervention as of right in any civil or administrative action to obtain remedies by any citizen having an interest which is or may be adversely affected; or
2. Assurances that the State agency on enforcement authority will:
  - (a) Investigate and provide written response to all citizen complaints duly submitted.
  - (b) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(c) Publish and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

Subsection (d) of O.C.G.A. 12-8-34 of the Georgia Comprehensive Solid Waste Management Act of 1990 (GCSWMA) as amended through 1993 provides for mandatory notice of the pendency of a permit application to local governments and other interested parties in the locality in which a proposed facility may be located.

The GCSWMA does not contain a specific section detailing citizen intervention in administrative enforcement authority. The basic reason for this is such a provision is unnecessary in view of other provisions of the Georgia law.

The GCSWMA at O.C.G.A. 12-8-30.1 provides that all hearings on and review of other enforcement actions on orders shall be conducted in accordance with the provisions of subsection (c) of O.C.G.A. 12-2-2. O.C.G.A. 12-2-2 provides for hearings before a hearing officer appointed by the Board of Natural Resources and further provides that the hearing shall be conducted in accordance with the Georgia Administrative Procedures Act (O.C.G.A. Chap. 50-13, as amended).

The Georgia Administrative Procedures Act provides at Georgia O.C.G.A. 50-13-14 for intervention by citizens in contested cases. Accordingly, the GCSWMA does, in fact, provide for citizen intervention by expressly providing that hearing be held pursuant to O.C.G.A. 12-2-2 which in turn provides that hearings shall be conducted in accordance with the Georgia Administrative Procedures Act, which in turn provides for intervention.

In addition to administrative enforcement actions, certain civil actions may be brought pursuant to the GCSWMA, such as injunctive relief provided under O.C.G.A. 12-8-30.4. Such civil action would be governed by the Georgia Civil Practice Act which provides at O.C.G.A. 9-11-24 for the intervention by interested parties.

To supplement these legal provisions authorizing public participation, Rule 391-3-4-.03 specifies that interested persons may participate in the enforcement of GCSWMA and the Rules pursuant to the applicable provisions of the GCSWMA, the Georgia Administrative Procedures Act, the Georgia Executive Reorganization Act, the Georgia Civil Practice Act, or any other applicable provision of Georgia law. This Rule and the legal provisions discussed assure public participation under the State program will be equivalent to and consistent with the federal program under 40 CFR Part 258.